

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

MEMORANDUM AND ORDER

Before the Court is movant's pro se motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, which indicates that movant believes he may be eligible for relief under the recent Supreme Court case of *Johnson v. United States*, 135 S.Ct. 2551 (2015).¹ The motion is denied.

In *Johnson*, the Court held the “residual clause” of the Armed Career Criminal Act (“the ACCA”), 18 U.S.C. § 924(e)(2)(B)(ii), is unconstitutionally vague. The ACCA enhances the punishment for firearms offenses under 18 U.S.C. § 922(g) when the defendant has at least three prior convictions for a serious drug offense or a “violent felony.”

Defendant was not sentenced under the ACCA because he did not have three prior convictions for violent felonies. As a result, *Johnson* has no application to his sentence, and he is not entitled to relief.

Finally, movant has not met the burden for issuing a certificate of appealability because he has not demonstrated “that jurists of reason would find it debatable whether the petition states

¹ Movant filed a letter with the Court asking whether he is entitled to relief under *Johnson*. For the sake of justice, the Court construes the letter as a motion to vacate under § 2255.

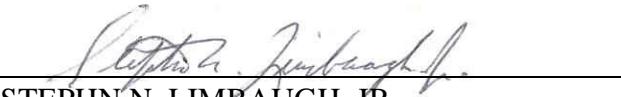
a valid claim of the denial of a constitutional right.” *Khaimov v. Crist*, 297 F.3d 783, 785 (8th Cir. 2002) (quotation omitted).

Accordingly,

IT IS HEREBY ORDERED that the motion to vacate is **DENIED**, and this action is **DISMISSED**.

An Order of Dismissal will be filed separately.

Dated this 13th day of July, 2016.



STEPHN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE